

Settlement reached in NCSD lawsuit against SLO County

By Mike Hodgson/Associate Editor

A judgment entered in a lawsuit against San Luis Obispo County requires the county to abide by its own ordinance as well as charging a property owner thousands of dollars to help develop a supplemental water source.

The judgment approved March 13 by Superior Court Judge Teresa Estrada-Mullaney marks a settlement of the Nipomo Community Services District's lawsuit against the county over a zoning change outside district boundaries.

The judgment requires property owner Henri DeGroot to pay \$13,200 for each parcel in his subdivision toward developing a supplemental water source for the Nipomo Mesa Water Conservation Area, said Jon Seitz, legal counsel for NCSD.

The judgment also requires that supplemental water be obtained before secondary units can be approved on DeGroot's subdivision, and before any final parcel or subdivision maps are recorded on another five properties.

For the secondary units to be approved and final parcel or subdivision maps to be recorded, supplemental water must be specifically allocated to those projects, but it can't come from the first 2,500 acre-feet of that supplemental water that's delivered to the area.

DeGroot also will have to pay \$19,000 for NCSD's attorney fees and other court costs, Seitz said.

In addition, the judgment requires that any General Plan amendments comply with County Code provisions preventing land-use changes that would result in additional nonagricultural water use.

However, Deputy County Counsel Tim McNulty said the judgment does not mean the county violated its own ordinance, and noted the DeGroot project will result in a lower water use on the site than currently exists.

"I think (the judgment) is fine for the county," McNulty said. "It was mostly a matter of finding common ground between NCSD and DeGroot."

NCSD decided to file suit against the county in January 2007, about a month after the Board of Supervisors approved DeGroot's application to change the zoning on 40 acres of property near Los Berros and El Campo roads.

The change from agriculture to rural residential - which included five other properties - would allow DeGroot to create seven parcels for home sites and 25 acres of open space on what was formerly a chicken ranch.

But NCSD claimed in the suit that the General Plan amendment violated the county's own ordinance banning land-use changes that increase water use until supplemental water is obtained for the Nipomo Mesa Water Conservation Area, where supervisors have declared the groundwater basin in a state of overdraft.

"That was the district's position, along with the inadequacy of the environmental determination," Seitz said of the suit.

Although the development would receive water from Rural Water Co., not NCSD, the district argued both entities pump from the same groundwater basin.

John Belsher, attorney for DeGroot and other property owners, could not be reached for comment.

But McNulty said the county's ordinance actually says that if nonagricultural water demand increases as a result of a land-use change, it may not be allowed.

In this case, he said, a number of small businesses are operating on the DeGroot property that have a high nonagricultural water use, but DeGroot showed the seven residential parcels would have a lower water use than the businesses.

McNulty said DeGroot had a vesting tentative tract map application on file before the county ordinance was enacted, and the term “vesting” means the applicant is entitled to the benefit of ordinances and regulations in place at that time.

“You could argue either way whether the ordinance applied to this situation,” McNulty said. “(The supervisors) were actually acting on the land-use change, not the project. Nevertheless, we couldn't impose conditions that were not there before.”

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